IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WA.No. 1058 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.26090/2003
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APPELLANT:

MANAGING DIRECTOR,
KERALA CIVIL SUPPLIES CORPORATION, MAVELI BHAVAN
GANDHI NAGAR, KOCHI-20.

BY ADV. SRI.R.LAKSHMI NARAYAN

RESPONDENTS:
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1. K.J.JOSEPH, KALAPURACKAL HOUSE,
KUDAKACHIRA P.O., (VIA) MARANGATTUPALLY,
KOTTAYAM-686 635.

2. STATE OF KERALA, REP. BY COMMISSIONER
OF CIVIL SUPPLIES, THIRUVANANTAHPURAM.

3. DIRECTOR OF CIVIL SUPPLIES,
THIRUVANANTAHPURAM.

4. SUB TREASURY OFFICER,
UZHAVOOR,KOTTAYAM.

BY ADV. SRI.MATHEW PHILIP
GOVERNMENT PLEADER SRI.SANDESH RAJA FOR R2, R3 & R4

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.
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W.A. NO.1058 OF 2007
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Dated this the 16th day of July, 2007

J U D G M E N T

Radhakrishnan, J.

This appeal has been preferred by the Managing Director, Kerala State Civil Supplies Corporation aggrieved by the direction of the Learned Single Judge holding that the writ petitioner is entitled to get entire DCRG with interest at the rate of 8% from 1.2.03. Learned Single Judge felt that the liability was not fixed against the employee within three years from the date of retirement. All the same, learned Single Judge ordered that it is open to the Government to recover the loss, if any, from the responsible officers.

2. Petitioner retired from service on 31.1.2000. Since his entire DCRG has not been disbursed, he has approached this court seeking a direction to the Corporation to pay the amount stated in Ext.P36. He has also sought for a writ of certiorari to quash Exts. P11, P16, P21, P25 and P30 orders. Ext.P34 is the liability certificate dated 8.4.03 directing the writ petitioner to

remit an amount of Rs.1,28,179/- towards liability to the Corporation. The learned Single Judge noticed that since Ext.P34 liability certificate has been issued on 8.4.2003, that is 15 years after the date of retirement, it is illegal, and the amount mentioned therein cannot be recovered from the retired employee beyond three years of the retirement.

3. We are of the view that complete facts were not placed before the learned Single Judge. Facts would clearly indicate that liability of the petitioner was fixed by various orders before his retirement. Ext.P9 order is dated 15.9.99, P14 is the order dated 15.9.99, P19 is the order dated 15.9.1999, P23 is the order dated 14.7.99 and P28 is the order dated 4.8.99. All these orders would indicate that the liability of the petitioner was fixed after conducting disciplinary proceedings while he was in service. Petitioner filed appeal against these orders and all those were dismissed. True that it is after the retirement, Corporation has issued Ext.P34 liability certificate. But the liability was fixed while he was in service.

4. Counsel referred to a decision of this Court in **Joseph v. KSRTC (1997(2) KLT 912)** where it was held that “where the

liability of an employee is already fixed by a properly constituted judicial or quasi-judicial Tribunal, there is no question of giving a further opportunity to explain the liability".

5. In such circumstances, we hold that liability has already been fixed while he was in service and the learned Single Judge had erred in holding that since Ext.P34 liability certificate was issued for recovering the amount mentioned therein, we are therefore inclined to allow this appeal and set aside the judgment of the learned Single Judge.

6. Counsel appearing for the contesting respondents submitted that the third relief sought for in the writ petition has not been considered by the learned Single Judge and he seeks to file a review, he may do so about which we express no opinion.

Writ appeal is allowed as above.

K.S.RADHAKRISHNAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp